duress, the declaration alleged that the defendant had installed fixtures in a building of which the plaintiff was general contractor, that the defendant had been paid the full price, but falsely and fraudulently claimed an additional sum for extra work and threatened to bring a replevin suit to remove the fixtures unless the extra sum was paid; and that the plaintiff thereupon paid this demand under compulsion, to prevent irreparable injury. *Held*, that the declaration does not state facts sufficient to constitute a cause of action. *James C. McGuire & Co.* v. *H. G. Vogel Co.*, 149 N. Y. Supp. 756 (App. Div.).

Money paid under duress is recoverable upon the equitable doctrine of unjust enrichment, so long as there is enough compulsion to negative voluntary payment. *Koenig* v. *People's Gas, etc. Co.*, 153 Ill. App. 432. But the law will not lightly undo private settlements of disputed claims, made with full knowledge of the facts, even though the claim proves unfounded. *Pearl* v. *Whitehouse*, 52 N. H. 254. Ordinarily, therefore, money paid upon a threat of legal proceedings may not be recovered. *Weber* v. *Kirkendall*, 44 Neb. 766, 63 N. W. 35. If the threat is honestly made, and presents the alternative of paying the contested claim or awaiting a court adjudication, a party will not be acting under compulsion when he chooses the former. *Parker* v. *Lancaster*, 84 Me. 512, 24 Atl. 952. *New Orleans & N. E. R. Co.* v. *Louisiana, etc. Co.*, 109 La. 13, 33 So. 51. But where the threat is made in bad faith by one having an oppressive advantage of position, so that the alternative of surrender is irreparable injury or immediate hardship, the duress is sufficient to justify a recovery of payments made. *Sartwell* v. *Horton*, 28 Vt. 370; *Swift & Co.* v. *United States*, 111 U. S. 22. In the principal case the parties appear to have been on an equal footing, and in spite of the dishonesty of the claim, there seems to have been nothing equivalent to compulsion in the dealings between them.

RESCISSION — RESCISSION FOR FRAUD OR MISTAKE — RESTORATION OF CONSIDERATION BY RESCINDING PARTY: WHEN EXCUSED. — A purchased municipal bonds from B under a contract induced by fraud of B. He paid B approximately one quarter of the price in stock and the rest in cash. After litigation, A was able to collect the face value of the bonds from the municipality, but lost the interest. The stock was pledged by B to the plaintiff, who being sued by A and B for the stock and dividends, brings a bill of interpleader. B now being insolvent, A in his answer demands the stock and dividends under a rescission of the contract, without offering to return the value of the bonds. *Held*, that A may recover. *Page Belting Co.* v. *F. H. Prince & Co.*, 91 Atl. 961 (N. H.).

For a discussion of the principles involved and of the necessity in general of putting the defendant in *statu quo*, see this issue of the REVIEW, p. 315.

TORTS — UNUSUAL CASES OF TORT LIABILITY — REIMBURSEMENT FOR PAYMENT MADE UNDER WORKMEN'S COMPENSATION ACTS. — An employee, whose master had accepted the optional clause of an employers' liability act, was injured in the course of his employment through the negligence of a third person not a fellow-servant. The employer, who was compelled by the act to compensate the workman, now sues the negligent third person to recover the payments made under the act. *Held*, that he cannot recover. *Interstate Telephone and Telegraph Co.* v. *Public Service Electric Co.*, 90 Atl. 1062 (N. J.).

For a discussion of this case on principles of tort liability, and in view of the policy of the workmen's compensation acts, see NOTES, p. 307.

TRUSTS — *Cestui's* INTEREST IN THE *Res* — LIFE TENANT'S RIGHT TO ACTUAL INCOME FROM UNAUTHORIZED INVESTMENTS. — The testator left property in trust for conversion with full power of postponement, and directed

the trustees to divide "the trust premises constituting or representing" the residuary estate into certain shares and to pay the income of each share to a tenant for life with remainders over. The estate was composed of both authorized and unauthorized investments. *Held*, that the life tenants should enjoy the actual income from the unauthorized investments, pending conversion. *In re Godfree*, [1914] 2 Ch. 110.

When there is a trust for the benefit of life tenants and remaindermen, with an express provision for conversion or a duty to convert because the property is not properly invested, the gross fund is treated as converted from the date of the testator's death, and the life tenant is given the income that would have been earned, had the money then been properly invested. *Edwards* v. *Edwards*, 183 Mass. 581, 67 N. E. 658; *Brown* v. *Gellatly*, L. R. 2 Ch. App. 751. The courts aim to carry out the will of the testator, however, and the life tenant will take the actual income when such an intention appears. *In re Hubbuck*, [1896] 1 Ch. 754. Some jurisdictions deduce such an intention from the absence of a direction to convert. *Heighe* v. *Littig*, 63 Md. 301. See *Patterson* v. *Vivian*, 63 N. Y. Misc. 389, 399, 117 N. Y. Supp. 504, 510. But the better rule presumes from the gift to life tenants and remaindermen that the testator intended each to receive equal benefits, and therefore requires conversion unless some positive indication appears that the property was to be enjoyed *in specie*. *Porter* v. *Baddeley*, 5 Ch. D. 542. See PERRY, TRUSTS, 6 ed., p. 900. The English courts, however, seem to except income-producing land from this rule. *In re Oliver*, [1908] 2 Ch. 74. They also distinguish cases where there is an express power given to trustees to convert the estate or not at their absolute discretion. *Yates* v. *Yates*, 28 Beav. 637; *In re Pitcairn*, [1896] 2 Ch. 199. The principal case deserves criticism, in that it further impairs the general rule, and finds an intention that the property be enjoyed *in specie*, by a strained construction of the words "constituting or representing."

TRUSTS — CREATION AND VALIDITY — RESERVATION OF POWER TO REVOKE: LIABILITY TO TRANSFER TAX. — A donor executed a deed conveying property to a trustee on certain trusts, reserving an absolute power to amend or revoke the trust. A statute provided that transfers of property "by deed made in contemplation of the death of the grantor or intended to take effect in possession at or after such death" should be subject to a transfer tax. CONSOL. LAWS N. Y., TAX LAW, § 220, subd. 4. *Held*, that the trust fund is subject to a tax on the death of the donor. *In re Hoyt's Estate*, 86 N. Y. Misc. 696, 149 N. Y. Supp. 91.

The court imposes the tax on the ground that the transfer was "intended to take effect in possession at or after the donor's death." If this means that no trust was created until that time, the gift would be invalid as a testamentary disposition. *McEvoy* v. *Boston Five Cents Savings Bank*, 201 Mass. 50, 87 N. E. 465; *Nicklas* v. *Parker*, 71 N. J. Eq. 777, 71 Atl. 1135. That this is a difficulty however which does not appeal very strongly to the New York courts is apparent from their doctrine of "tentative trusts." *Matter of Totten*, 179 N. Y. 112, 71 N. E. 748. It is clear, moreover, that the mere reservation of a power to revoke did not invalidate the trust under the Statute of Wills. *Van Cott* v. *Prentice*, 104 N. Y. 45, 10 N. E. 257; *Kelly* v. *Parker*, 181 Ill. 49, 54 N. E. 615. But it is still open to the court to hold that the power to revoke shows such an intention to evade the inheritance tax that the trust is a testamentary disposition under the transfer tax laws. *Matter of Bostwick*, 160 N. Y. 489, 55 N. E. 208. It might have been a more satisfactory ground of decision to construe "in contemplation of death" to include gifts made *inter vivos* with an intent to escape the tax. Earlier New York cases, however, seem to exclude such an interpretation of the statute. *Matter of Spaulding*, 49 App. Div. 541, 63 N. Y. Supp. 694 (aff'd, 163 N. Y. 607, 57 N. E. 1124); *Matter of*